IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 10TH APRIL 2007 / 20TH CHAITHRA 1929

RCRev..No. 76 of 2007()

RCA.5/2005 of DISTRICT COURT, KOTTAYAM
BRCOP.2/2003 of MUNSIFF COURT, PALA
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: REVISION PETITIONER/APPELLANT/COUNTER PETITIONER.

DEVASSIA JOSEPH, S/O.JOSEPH, AGED 73
YEARS, PURAPPUZHA HOUSE, LALAM VILLAGE,
LALAM KARA, MEENACHIL TALUK, KOTTAYAM DISTRICT.

BY ADV. SRI.V.R.KESAVA KAIMAL

RESPONDENT: PETITIONER

M.A.THOMAS, S/O ANTONY, AGED 58 YEARS,
RESIDING AT MOOZHAYIL HOUSE, LALAM KARA,
LALAM VILLAGE, MEENACHIL TALUK,
KOTTAYAM DISTRICT.

BY ADV. SRI.MATHEW PHILIP EDAPPALLIL

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 22/03/2007, ALONG WITH RCR NO. 90 OF 2007 THE COURT ON 10/4/2007 DELIVERED THE FOLLOWING:

ORDER ON IA 614/07 IN RCR 76/07

DISMISSED.

SD/- P.R. RAMAN,JUDGE.

SD/- ANTONY DOMINIC, JUDGE.

10/4/2007

P.R.Raman & Antony Dominic, JJ.
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R.C.R.Nos.76 & 90 of 2007
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Dated this the 10th day of April, 2007.

ORDER

Antony Dominic,J.

R.C.R.No.76/07

Tenants in B.R.C. O.P Nos.2 and 3 of 2003 on the file of the Rent Control Court, Pala for eviction, which was confirmed by the Appellate Authority by its orders in R.C.A. Nos.5 and 4 of 2005 are the revision petitioners in R.C.R.Nos.76 and 90 of 2007. These two cases, being similar in all respects are being disposed of by this order.

2. Respondent in R.C.R.No.76 of 2007 filed the petition for eviction, invoking grounds under Section 11(2)(b) and Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act'). According to him, the scheduled premises originally belonged to his father and devolved upon by virtue of Gift Deed No.2905/1981 and that since then, he has been in absolute possession and enjoyment of the property. The building was leased out to the revision petitioner for a monthly rent of Rs.25/-, where he has been conducting trade of electrical goods. It is alleged that the tenant has been a chronic defaulter of rent and that since December,

1984, rent is in arrears.

3. It is stated that the respondent - landlord is a retired Deputy Tahsildar and that he wanted to establish a revenue consultancy. According to him, the pension he was getting could hardly meet his requirements, which included the educational expenses of his child and he wanted to earn an additional income by establishing the revenue consultancy, which will be for the benefit of the public also. It is stated that the tenant has not been conducting any business in the premises and despite the same, he did not surrender vacant possession of the building to the landlord and hence the petition was filed seeking his eviction.

4. The tenant entered appearance and filed his counter stating that he is engaged in the business of electrical contract work, using the tenanted premises as his office, for the last 40 years. It is stated that his son was having wiring licence and contract licence and that he has been conducting the business. He denied the allegation regarding arrears of rent and also that no business was conducted in the room. According to him, the need urged by the landlord was not bonafide and was only a ruse to evict him from the premises. It was contended that the room in question was not suitable for the landlord for starting the revenue consultancy and that the tenant was depending for his

livelihood on the income derived from the business he carried on in the premises. It was also stated that there was no other building available in the locality for shifting his business. The tenant also pleaded that acquisition of about ½ portion of the petition scheduled building for widening of Angamaly – Punalur State High-way had already commenced and therefore, the landlord would not be in a position to establish the revenue consultancy in the premises.

5. Both sides adduced evidence and on behalf of the landlord, Exts.A1 to A7 were marked. By its order dated 29.11.2004, the Rent Control Court held that as matters stood then, there was no arrears of rent due from the tenant as everything has been paid to the counsel for the landlord on 18.11.2004. On this basis, eviction under Section 11(2)(b) of the Act was declined. Proceeding further, examining the evidence available, the court held that the need urged by the landlord was bonafide and that the tenant is not entitled to the benefits of the Second Proviso to Section 11(3) of the Act. Accordingly, eviction was ordered under Section 11(3) of the Act.

6. The tenant carried the matter in appeal to the Appellate Authority, which by its judgment dated 17th June, 2006 held that the landlord is entitled to get an order of eviction under Section 11(2) and Section 11(3) of the Act. It also held that the tenant is not entitled to

get the benefit of the Second Proviso to Section 11(3) of the Act. Aggrieved by the order of the Rent Control Court as affirmed by the Appellate Authority, the tenant has come up in revision before us.

7. Counsel for the petitioner contended that the findings of the Rent Control Court and the Rent Control Appellate Authority on the bonafide need urged by the landlord and order of eviction under Section 11(3) of the Act is illegal and erroneous. According to him, equally erroneous is the concurrent finding on the Second Proviso to Section 11(3) of the Act. It was argued that the land acquisition proceedings initiated by K.S.T.P. for widening the road has already commenced and that in view of the advanced stage of the land acquisition proceedings, the landlord at any rate, will not be in a position to establish the revenue consultancy, for which he sought eviction of the tenant. It is further pointed out that in terms of the scheme framed by the Government of Kerala, even a tenant like the revision petitioner will be entitled to certain monetary compensation if he is to be evicted for widening the road. It was stated that if he is to be evicted at this stage, he will be losing the benefit of the scheme as well, while at the same time, the landlord is not benefited in any manner by the eviction of the tenant.

8. At the same time, counsel for the landlord would argue that

both the courts have concurrently found that the need urged by the landlord is bonafide and that no case has been made out to enter a finding different from the concurrent findings of fact already entered. He will also urge that even if the road is to be widened in terms of the notification issued under the Land Acquisition Act only a minor portion of the building will be affected and even thereafter, the landlord can establish revenue consultancy in the building in question. According to him, findings of the courts below are only to be upheld.

9. We have considered the submissions made by counsel for both parties.

10. In so far as the finding under Section 11(3) of the Act is concerned, which was assailed before us, we note that the landlord had testified in court that he being a retired Deputy Tahsildar wanted to establish a revenue consultancy in the building. According to him, pension that he was earning was insufficient to meet his expenses which included the educational expenses of his child. He wanted to earn an additional income and if such a need is projected by the landlord, one cannot find fault with him. While on the other hand, the tenant contended that the room is not suitable for the proposed revenue consultancy to be established by the landlord. The Rent Control Court has found that the need urged by the landlord is

bonafide and that there was nothing to doubt the genuineness of the same. This issue has been examined in detail by the Appellate Authority also. The Appellate Authority took note of the evidence tendered by PW1 – landlord and his desire is to earn an additional income from revenue consultancy that he wanted to set up. Taking note of the fact that there was nothing to doubt the bonafide need and also that the building in question was situated in an important locality, the Appellate Authority also did not find reason to doubt the bonafide or genuineness of the claim put forward by the landlord. In the light of the evidence adduced and considered by the Rent Control Court and the Rent Control Appellate Authority, we are in agreement with the findings on fact entered into concurrently by these Authorities.

11. As far as the benefit of the Second Proviso to Section 11(3) of the Act claimed by the tenant is concerned, the contention of the tenant was that he was mainly depending for his livelihood upon the income derived from the business that he carried on in the scheduled premises. The Rent Control Court found, based on the tenant's own evidence, that he had no licence for conducting the business of electrical wiring and other contract work. Admittedly, it was his son, who was having licence and the building in question was used by him for his business purposes. Analysing this contention, the Rent Control

Court has correctly concluded that if at all anybody derived any income from the business, it was only the tenant's son and not the tenant. On this reasoning, the Rent Control Court concluded that as the tenant was not carrying on any business in the tenanted premises, the tenant could not have been depending on the income derived from the business for his livelihood either mainly or otherwise. Proceeding further, the Rent Control Court also examined the contention regarding the availability of buildings in the locality. While the tenant was denying availability of any such building, the landlord examined PWs 2 and 3, who are building owners in Pala Town. These witnesses testified that they themselves were having buildings set apart for leasing out to tenants. Thus, in the light of the evidence so tendered by the landlord, the court concluded that there were buildings available in the locality and denied the benefit of the Second Proviso to the tenant.

12. In the appeal, the question whether the tenant is entitled to the benefit of the Second proviso to Section 11(3) of the Act has been again examined by the Rent Control Appellate Authority. The Rent Control Appellate Authority found that the tenant has not succeeded in establishing that he was depending for his livelihood mainly on the income derived from the business. Since the tenant was not

conducting any business in the premises and as his son was the person who was carrying on the business, the Rent Control Appellate Authority concluded that the tenant was not depending upon the income derived from the business. Regarding the availability or otherwise of buildings in the locality also, accepting the evidence tendered by the landlord, the Rent Control Appellate Authority concluded against the tenant. Considering the evidence that is considered by the Rent Control Court and the Rent Control Appellate Authority, we are in agreement with the conclusions arrived at. Therefore, we reject the contention of the counsel for the revision petitioner that the findings of the Rent Control Court and the Rent Control Appellate Authority on Section 11(3) of the Act and the Second Proviso thereto are erroneous.

13. The next contention was that in view of the land acquisition for the purpose of road widening by K.S.T.P., a project of the Government of Kerala, the building will not be available for the landlord to establish his revenue consultancy. Counsel for the landlord, referring to the notices issued to him by the Land Acquisition Authorities, contended before us that if at all the project is to materialise and widening is to take place, only a small portion of the building will be affected. We have no material to conclude this issue as it was not raised or considered by the authorities below. According to

the counsel for the revision petitioner, if his client is to be evicted now, he will not be eligible for the benefit of the scheme for compensation framed by K.S.T.P. It was stated that even the tenants of such premises are eligible for certain amount of compensation and that if eviction is to take place at this stage, his client will be deprived of the benefits thereof. In order to determine the correctness of the submission made by the petitioner, we had directed the Government Pleader to take instructions on the progress of the proposal to compensate the tenants like the revision petitioner. On instructions, the Government Pleader confirmed that there is such a proposal and a scheme is yet to take shape and that the same has not been approved by the Authorities themselves. In view of the concurrent findings of the courts below that the tenant is liable to be evicted under Section 11(3) of the Act, we cannot direct that further action in the matter should await the eventual finalisation of the scheme. At this stage, we can only say that eviction of the tenant in pursuance to the orders of the Rent Control Court and as affirmed by the Rent Control Appellate Authority will not deprive him of any such benefits in case if he is entitled to on finalisation of any such scheme.

14. Finally, learned counsel for the tenant sought for reasonable time to vacate the premises and to surrender possession to the

landlord. On this aspect, we heard the counsel for the landlord also. Taking into account the fact that the tenant has been in occupation of the premises for about 40 years and also that either he or his son has been carrying on some business therein, we are inclined to grant him three months time to surrender vacant possession of the premises to the landlord, subject to the condition that the tenant shall file an undertaking in the form of an affidavit before the Execution Court agreeing to vacate and surrender vacant possession of the premises to the landlord on or before 27.6.2007. He shall also pay the arrears of rent, if any, and also an equivalent sum towards compensation for use and occupation of the premises till vacant possession is given. He shall also undertake in the affidavit to be filed that he will not induct any stranger to the premises in question. The affidavit shall be filed within 30 days from today. In case, if the tenant commits default in any of the conditions mentioned above, the landlord will be entitled to evict the tenant forthwith.

RCR No.90/2007

15. Coming to the facts of R.C.R.No.90 of 2007, as already stated above,it arises out of B.R.C. O.P.No.3 of 2003 in which the respondent sought eviction of the tenant from the adjacent room of which Shri. Radhakrishnan Nair is the tenant, and eviction was ordered

by the Rent Control Court by its order dated 29.11.2004. The order of eviction was affirmed by the Rent Control Appellate Authority, Kottayam by its judgment dated 17th June, 2006 in R.C.A. No.4 of 2005. It is aggrieved by the order of eviction concurrently passed that the tenant has filed this revision.

16. In the petition filed before the Rent Control Court, it was contended that the room in question was leased out to the tenant Shri. Radhakrishnan Nair, for a monthly rent of Rs.60/- and that he was initially conducting business of mats, coir, etc. and later, he had started vegetable business. The landlord stated that since September, 1993, the rent was in arrears and that despite demands, arrears have not been paid. For the same bonafide need urged by him, as in R.C.R. No.76 of 2007, he sought eviction of the tenant in this case also. The Rent Control Court in its order held that the revision petitioner could not be evicted under Section 11(2)(b) of the Act as payment towards arrears of rent for the period from July, 2003 to April, 2004 was made to the counsel for the landlord, which was accepted without any protest or objection. Proceeding further, the bonafide need urged by the landlord was examined and on the evidence similar to that adduced in B.R.C. O.P.No.2 of 2003, finding that there was nothing to doubt the genuineness of the need urged,

the Rent Control Court held that the ground under Section 11(3) of the Act was made out. As regards the claim of the tenant for the benefit of the Second Proviso to Section 11(3) of the Act is concerned, the Rent Control Court held that the tenant's own evidence as CPW1 disproved his claim for the benefit of the proviso. He himself had stated in his evidence that he had never enquired about the availability of any suitable building in the locality for conducting the vegetable business. In addition to this, the Rent Control Court also considered the evidence tendered by PWs 2 and 3 revealing the availability of building in the locality. On this basis, the Rent Control Court declined the benefit of the Second Proviso to Section 11(3) of the Act and ordered eviction.

17. The tenant carried the matter in appeal before the Rent Control Appellate Authority and filed R.C.A. No.4 of 2005, which was also dismissed by the Appellate Authority by its judgment dated 17th June, 2006. As regards the ground under Section 11(2) (b) of the Act is concerned, as in the case of the tenant in B.R.C O.P. No.2 of 2003, the Appellate Authority found that the payment made by the tenant was only the admitted arrears of rent, which was a pre-requisite for the tenant to contest the proceedings against him. On the evidence available and referring to the decisions of this Court reported in

Bhaskaran Assan v. **Ammukutty Amma** - 1992(2) K.L.T. 565, the Appellate Authority came to the conclusion that the case of the landlord that the rent is in arrears from September, 2003 is only to be accepted. On this reasoning, the Appellate Authority concluded that the tenant is liable to be evicted under Section 11(2)(b) of the Act. Proceeding further, the Appellate Authority also examined the ground under Section 11(3) of the Act urged by the landlord and appreciating the evidence, which is similar in all respects as in B.R.C. O.P.No.2 of 2003, the Appellate Authority found that the need alleged by the landlord was genuine and bonafide. In so far as the claim of the tenant for the benefit of the Second Proviso to Section 11 (3) of the Act is concerned, the Appellate Authority found that there was no convincing evidence, apart from the oral statement of the petitioner as CPW1 that he was depending mainly upon the income derived from the business carried on in the building for his livelihood. As regards the availability of other buildings in the locality for carrying on his trade, the court relied on the evidence of PWs 2 and 3 and tested in the light of the statement of the petitioner that he did not make any enquiry in this regard. On this ground, the Appellate Authority also confirmed the finding of the Rent Control Court. In the light of the above finding, we see no reason to take a different view.

18. The next contention was that in view of the acquisition for the purpose of road widening, once the property is acquired, the building will not be retained for the landlord to establish his proposed business of revenue consultancy. Referring to the notices received by the landlord from the Land Acquisition Authorities, it was contended before us that if at all the project is to materialise and widening of the road is materialised, only a minor portion of the building will be affected. As we have already held, we have no material to conclude this issue either way as it was not raised or considered by the courts below. According to the counsel for the revision petitioner, if the tenant is to be evicted, he will not be eligible for the benefit of the scheme for compensation implemented by K.S.T.P. It was submitted that even the tenants are eligible for compensation and that if eviction is enforced at this stage, his client will be deprived of such benefits. In order to determine the correctness of the above submission made by the petitioner, we had directed the Government Pleader to take instructions on the progress of the proposal to compensate the tenants like the revision petitioner. On instructions, the Government Pleader submitted that though there is such a proposal a scheme is yet to be finalised with the approval of all concerned. In view of the findings of the courts below that the tenant in this case also is liable to

be evicted under Section 11(3) of the Act, and we do not propose to direct that further action on the orders in the rent control proceedings, should await the eventual finalisation of the scheme. We only classify that eviction of the tenant in pursuance to the orders of the Rent Control Court and affirmed by the Rent Control Appellate Authority will not deprive the tenant of any such benefits in case he is entitled to the same on finalisation of the scheme.

19. Finally,having reconciled to the realities of the situation, learned counsel for the tenant sought for reasonable time for vacating the premises and to surrender possession to the landlord. On this aspect, we heard the counsel for the landlord also. Taking into account the fact that the tenant has been in occupation of the premises for several years and also that he has been carrying on business there, we are granting him three months time to surrender vacant possession of the premises to the landlord, subject to the condition that the tenant shall file an undertaking in the form of an affidavit before the Execution Court agreeing to vacate vacant possession of the premises to the landlord on or before 27.6.2007. He shall also pay the arrears of rent, if any, and also a sum equivalent to monthly rent towards compensation for use and occupation of the premises till vacant possession is given. He shall also undertake in the

affidavit to be filed that he will not induct any stranger into the premises in question. The affidavit shall be filed within 30 days from today. In case, the tenant commits default in any of the conditions mentioned above, the landlord will be entitled to evict the tenant forthwith.

20. We should mention that in both cases, the Rent Control Court had declined eviction under Section 11(2) (b) of the Act and despite that no appeals were filed by the landlord, the Appellate Authority has reversed the findings in this regard. According to us, this is illegal and we vacate the finding of the Appellate Authority in regard to Section 11(2)(b) in both the appeals. However, since we have confirmed the finding in regard to Section 11(3) of the Act, the ultimate conclusion in both cases will remain unaltered.

Subject to the observations made herein above. R.C.R. Nos.76 and 90 of 2007 will stand dismissed.

P.R.Raman,
Judge.

Antony Dominic
Judge.

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